IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY SEVENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION NO : 23315 of 2003

Between:

A.Venkata Krishnaiah s/o. Venkataiah
Sri Vengamamba Stone Crusher, Brahmeswram (Village),
Duttalur Mandal, Nellore District

..... PETITIONER

AND

1 The Divisional Forest Officer, Nellore
2 The Forest Range officer Udayagiri, Nellore District
3 The Dy.Forest Range officer, Duttalur (Village), Duttalur Mandal, Nellore District

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus under Article 226 of the Constitution of India, declaring the action of the respondents 2 and 3 in threatening the petitioner to close down the Sri Vengamamba stone Crusher situated in the land in Sy.NO.494-1, Extent Ac.3.23 cents; Sy.NO.494-2, extent Ax.1.77 cents of Brahmeswaram village, Duttalur Mandal, Nellore District, is arbitrary, illegal, without jurisdiction and consequently direct the respondents not to interfere with the running of the said sri vengamamba stone crusher, Brahmeswaram, Duttalur Mandal, Nellore District. and pass

Counsel for the Petitioner: MR.CH.CKRISHNA REDDY

Counsel for the Respondent No.: GP FOR FORESTS

The Court made the following :

ORAL ORDER:

Heard both sides and at their request, the main writ petition itself is taken up for disposal.

The petitioner herein who is a proprietor of stone crusher files this writ petition inter alia to declare the action of the respondents 2 & 3 in seeking to remove and close the said crusher in the land in Sy. No. 494/1 & 2 in an extent of Ac 5.00 cents situated at **Brahmeswaram, Duttalur Mandal, Nellore District as bad,** illegal and void.

The case of the petitioner is that the said lands originally belonged to one Upputuru Masthanamma in whose favour pattadar pass books and revenue entries are in existence. She sold the same to the brother of the petitioner under agreement of sale dated 30-12-2000 and delivered possession. Thereafter, his brother has established a stone crusher under the name of Sri Vengamamba Stone Crusher. Subsequently, the petitioner purchased the same and running the same obtaining the licence from the competent authorities. However, surprisingly, the respondents herein are threatening to remove his crusher and take action against the petitioner. Hence, the writ petition.

In the counter affidavit filed by the respondents herein, it is stated that the land where the petitioner's crusher is existed is a forest land and the same has been declared so under Section 24 of A.P. Forest Act 1967, along with larger extent, in GOMs.No.146, Energy Forest, Environment, Science and Technology (For.IV)

Department, dated 18-5-90 and therefore the petitioner cannot make any claim either as a proprietor or otherwise and the question of establishing any stone crusher does not arise.

Though a reply has been filed by the petitioner to the allegations made in the counter affidavit, however, it is only his case that the petitioner was not aware of any such notification nor the said notification has been implemented in the revenue records where the pattadar pass books and other proprietary entries are exists in the revenue records.

Considering the submissions made and also on perusal of the material, it is seen that the petitioner pleads total ignorance in regard to the fact that the land is forest land and claims as a private individual, originally purchased by Upputuri Masthanamma who sold the same under an agreement of sale to his brother and in turn the petitioner purchases the same. Further he also submits that the petitioner has made lot of investment for running the business.

There is no serious dispute in regard to the issuance of notification as aforesaid on 18-5-90 declaring the said land as forest land. Once such notification was issued through a Gazette, the question of implementation or otherwise would not arise and the Government does not have any affect there on. Such notifications are final, conclusive and binding. Though, there is no proper explanation forthcoming as to the pattadar pass books and revenue entries are existed in favour of the private individuals, however, the petitioner has not impleaded the revenue authorities as parties to these proceedings so as to know about their stand. Further, it is in view of the fact that the petitioner is admittedly in possession and running the crusher with substantive investment, it is not the stage where all these aspects to deal with especially when it was brought out that the said land is forest land and hence the petitioner cannot make any claim nor have any right over the said land. Hence, I do not find any merit in the writ petition.

The writ petition is dismissed. However, the petitioner shall remove and take away the crusher within a period of three months from today.

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B. PRAKASH RAO, J

Dt. 27/8/04

KVRK

To

1 The Divisional Forest Officer, Nellore
2 The Forest Range officer Udayagiri, Nellore District
3 The Dy.Forest Range officer, Duttalur (Village), Duttalur Mandal, Nellore District

4. Two copies to GP for Forests, High Court Bldgs, Hyderabad (OUT).

5. Two CD copies.